

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
FOURTH REGION**

ALLIED CRAWFORD STEEL

Employer

and

Case 04-RC-160921

TEAMSTERS LOCAL 776<sup>1</sup>

Petitioner

**DECISION AND DIRECTION OF ELECTION**

The Board will not authorize an election in a unit where there is evidence that the number of employees in the petitioned-for unit will increase substantially in the near future. The Employer contends that the petition filed by the Petitioner seeking an election in a unit of the Employer's crane operators/warehouse laborers and truck drivers at the Employer's Middletown, Pennsylvania facility is premature because the unit is expanding and the number of employees currently employed is neither substantial nor representative of the size of the unit once the expansion is complete and the business is fully operational.<sup>2</sup> A hearing was conducted on October 9, 2015.<sup>3</sup> Based on the record evidence, the Employer currently employs 11 unit employees and its full complement is anticipated to be 33 employees. Accordingly, unit employees comprise a substantial and representative portion of the ultimate unit size, and I shall order an election in that unit.

**I. OVERVIEW**

Allied Crawford Steel (the Employer) is a full-length distributor of general line carbon steel products at its warehouse distribution center (the Warehouse) in Middletown, Pennsylvania. Gary Stern is an owner with Sidney Spiegel. Stern owns nine other such facilities in the United States and Crawford Metal Corporation, a steel distribution center in Toronto, Ontario, with six branches in Canada. The Toronto facility doubles as the headquarters for all the facilities.<sup>4</sup> On

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<sup>1</sup> The name of the Petitioner appears as corrected by stipulation.

<sup>2</sup> Although the Employer would not stipulate to the appropriateness of the unit, it did agree that the unit description as stated is appropriate.

<sup>3</sup> All dates herein are in 2015 unless otherwise stated.

<sup>4</sup> All 10 facilities in the United States are separately incorporated. The record refers to these facilities as the "U.S. Division."

August 15, 2014, the Employer purchased the Warehouse. It occupies 99,000 square feet and is the newest and largest facility. General Manager Anthony Hackmen manages the day-to-day operations at the Warehouse. John Weltmer is the Plant Manager and Alex Kovacs is a Vice President in charge of operations. The Warehouse employees report to Weltmer, the drivers to Hackmen. A financial controller, two administrative employees and two sales employees work at the Warehouse.

The Employer's intention at the time of purchase was to offer next day service of steel products to customers within a three-hour driving range from the Middletown facility. The service area includes Pittsburgh, Philadelphia, Baltimore, and Washington, D.C. The Employer started refurbishing the entire warehouse in January. It enlarged the inside of the building to accommodate more inventory and equipment, built an outside crane structure to carry wide flange beams, brought in two large saws and conveyor systems, built extra space to accommodate plate storage and future plasma cutting, and completely remodeled the office space. The modifications were completed in September.

The Employer started hiring in June by posting standing advertisements for warehouse employees on an on-line job board. It posted standing advertisements for warehouse employees and drivers. At the time of the hearing, the Employer had hired nine warehouse employees and two drivers. One of the warehouse employees and the two drivers were hired after the petition was filed. On October 12, the Employer officially opened its doors. It had already sold and delivered steel to at least three customers.

The Employer presented a business plan that Stern prepared for the hearing concerning its intention to hire additional employees.<sup>5</sup> Tonja Bowdoin, the U.S. Division's Financial Controller, testified that the business plan was based on conversations between Stern; Chris Marshall, COO for the U.S. Division; and Alex Kovacs, starting in March. The business plan notes that the warehouse has "more potential" than any other facility operated by Crawford Metal Corporation because its sales market is potentially larger than at any of the other facilities. The business plan also noted that when it was written the Employer had no sales and no customers. When the Warehouse becomes fully operational the Employer expects to have three shifts. On each of the three shifts, 14 warehouse employees and six to eight drivers, respectively, would operate the Employer's seven cranes, and transport the product to customers. A total of 48 to 50 employees would staff the operations. Bowdoin further testified that the Employer expects to be fully operational by May 2016 with a minimum of 33 employees to a maximum of 50 to 54 employees at that time.

Bowdoin gave further details concerning how many employees the Employer planned to hire over the next twelve months. The first set of hiring, for the initial opening, which has already occurred, consisted of nine warehouse employees and four drivers for a complement of 13 employees. As noted above, the Employer has only hired two drivers. Bowdoin testified that the 11 employees already hired are the bare minimum number of employees needed to open. Although the Employer asserted that a complement of 14 employees per shift would be necessary in order to have two employees for each crane as required by OSHA, the record

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<sup>5</sup> Stern was unavailable to attend the hearing.

disclosed that the Employer considers nine warehouse employees to constitute a full complement of workers for each shift, as at present it is not planning on having all seven cranes in operation at the same time. Bowdoin further testified that the Employer is in the process of seeking two additional drivers to hire now but it has been impeded by a requirement that the drivers have a specific CDL Class A license needed to operate a flatbed truck.

Based on its sales projections,<sup>6</sup> the next set of hiring would start this November/December with the hiring of five to six warehouse employees to start a second shift. The third set of hiring would occur around the January/February 2016 time frame, when the Employer expects to hire three additional warehouse employees to increase the second shift to a full complement of 9 warehouse employees. Again based on sales projections, the fourth set of hiring would happen around April/May 2016, when the Employer plans on hiring two additional drivers and six warehouse employees to start a third shift. The fifth set would occur by August or September 2016, when the Employer plans to hire an additional three warehouse employees to reach a full complement of 9 warehouse employees for the third shift and possibly two additional drivers. At that point, the Employer would have between 33 and 35 employees.

The business plan also envisions a “highly possible probable scenario” that in March or April 2016 the Employer will start performing “value added” services, which involve steel fabrication, if it is necessary in order to be competitive with other companies. If it decides to add those services, the Employer anticipates that it may hire an additional four warehouse employees at that time. Employees are in the process of being trained to fabricate steel.

The Petitioner presented two warehouse employees, Kevin Berry and Eric Carter, who testified that on September 24, Kovacs, Hackmen and Weltmer had a meeting with the seven warehouse employees employed at that time.<sup>7</sup> Kovacs told employees that in the next two to three months the Employer planned on hiring additional employees so that there would be a total of 21 to 25 warehouse employees working on three shifts. Carter further testified that he was privy to a conversation between Hackmen and a driver applicant in August in which Hackmen told the applicant that he was looking to hire up to five drivers. Hackmen did not give any time period for hiring drivers during this conversation.

## **II. LEGAL PRINCIPLES**

The Board will direct an immediate election, notwithstanding an employer’s plan to expand its workforce, when the employer’s current complement of employees is “substantial and representative” of the unit workforce to be employed in the near future. *Yellowstone International Mailing, Inc.*, 332 NLRB 386 (2000); *Toto Industries (Atlanta)*, 323 NLRB 645

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<sup>6</sup> While referring to sales projections generally, the business plan does not provide any specific financial basis or formula to support the number of employees hired now or in the future. The Employer did not provide any such testimony or documentation of the linkage between its sales projections and its hiring actions. Stern was the ultimate decision-maker. Bowdoin was not involved in the creation of the sales projections which were done by Stern and Marshall.

<sup>7</sup> The record does not disclose when the eighth warehouse employee was hired. The ninth warehouse employee was hired after the petition was filed.

(1997). This policy seeks to avoid depriving current employees of the right to select or reject a bargaining representative while not imposing a bargaining representative on a large number of employees hired in the near future based on the vote of a few currently employed individuals. *Toto Industries*, above.

While there is no hard and fast rule for this determination, the Board generally requires that at least 30 percent of the eventual employee complement is present in at least 50 percent of the anticipated job classifications. *Shares, Inc.*, 343 NLRB 455 fn. 2 (2004), enfd. 433 F.3d 939 (7<sup>th</sup> Cir. 2006); *Endicott Johnson de Puerto Rico, Inc.*, 172 NLRB 1676, 1677 fn. 3 (1968). In applying these standards, the Board looks at the anticipated size of the employee complement immediately before the Board decision issues where it differs from the size of the employee complement at the time of the hearing. *St. John of God Hospital, Inc.*, 260 NLRB 905 (1982); *Frolic Footwear, Inc.*, 180 NLRB 188 (1969). The Board also looks to factors such as the length of time over which the unit is expected to expand, *Gerlach Meat Co.*, 192 NLRB 559 (1971), and whether the Employer's expansion plans are concrete or speculative. *Jersey Shore Nursing and Rehabilitation Center*, 325 NLRB 603, 604 (1998); *Meramec Mining Co.*, 134 NLRB 1675, 1679-1680 (1961); *Libbey Glass Division, Owens-Illinois, Inc.*, 211 NLRB 939, 940 (1974). Finally, the expansion is only pertinent to the extent that it occurs within the petitioned-for bargaining unit, assuming it is a separate appropriate unit. *Yellowstone International Mailing*, above at 386; *Bekaert Steel Wire Corp.*, above at 561.

### III. ANALYSIS

As noted above, the Board's general guideline is to find a substantial and representative complement of employees where at least 30 percent of the eventual number of employees is employed in at least 50 percent of the anticipated classifications. As of the hearing, the Employer's total work complement was 11 employees, consisting of nine warehouse employees and two truck drivers. There is no doubt that the Employer plans to hire additional employees so it will have three shifts. What is in doubt is the number of employees to be hired and the dates they will be hired.

According to the Petitioner, in the next few months the Employer will have 21 to 25 warehouse employees and up to five drivers for a maximum of 30 employees. If that number is accurate, a substantial and representative complement would be present as the current complement of 11 employees constitutes at least 37% of the eventual number of employees employed. Additionally, as it is undisputed that there will be no new job categories created by the Employer, the current employees are employed in 100 percent of the ultimate job classifications. See *Gerlach Meat Company, Inc.*, above (substantial and representative complement found where the workforce constituted 35 percent of the complement working in 50 percent of the classifications projected for the next nine months).

According to the Employer, under its most optimistic scenario, the current employee complement would constitute less than 30 percent of an eventual complement of 54 employees (11 current employees plus 43 employees to be hired). If the Employer had concrete plans for such hiring, the petition would be dismissed.

However, in order to dismiss a petition based on an expanding unit, the Board requires more than mere speculation as to future plans. *Jersey Shore Nursing and Rehabilitation Center*, 325 NLRB at 604; *Meramec Mining Company*, above. See also *General Engineering, Inc.*, 123 NLRB 586, 587 (1959). The Board will not deny employees the opportunity to express their free choice in an election based on vague, tentative predictions where various uncertain events must occur prior to an increase in the employee complement. *Bekaert Steel Wire Corp.*, 189 NLRB 561, 562 (1971).

As a starting point, I find it inappropriate to include as part of the eventual total employee complement the four positions associated with the “value added” services the Employer anticipates to offer in March or April 2016. as a “highly possible probable scenario” that it will add unit personnel. In so finding, I note that, as acknowledged by the Employer, the addition of these employees is speculative and not definite. In these circumstances, I find that the anticipated future installation of the “value added” services and the Employer's projected hiring plans for March or April 2016 is too speculative to be considered in determining the substantiality of the present workforce in this case. See *Jersey Shore Nursing and Rehabilitation Center*, 325 NLRB at 604; *Gerlach Meat Co.*, above.

Furthermore, I note that the Employer has really presented two alternative plans for hiring employees in its business plan. The first plan looks at the Employer's capacity based on its seven cranes and asserts that the Employer will be running at full capacity with three shifts by May 2016 and employing 48 to 50 employees.<sup>8</sup> I find that the first plan appears to be based on the assumption that the Employer will be running at full capacity simply because it has the equipment to do so. The Employer has not provided evidence to establish that this prediction will come to fruition, since there is simply no evidence that it will have to man all seven cranes at the same time on a consistent basis in the next year. In these circumstances, I find that the anticipated employment at full capacity by May 2016 is too speculative to be considered in determining the substantiality of the present workforce in this case. See *Jersey Shore Nursing and Rehabilitation Center*, above.

The second plan presented by the Employer is more nuanced. In this plan, the Employer looks to add employees at set periods so that by September 2016 the Warehouse will be running three shifts with nine warehouse employees per shift, and six to eight drivers. In this second plan, the Employer would have a total of 33 to 35 employees. As the additional two drivers are only a possibility, I would not include their number in determining whether there is a substantial and representative complement. Although the Employer did not provide any evidence to establish how it determined the number of employees it planned to hire, this plan is theoretically based on sales projections made by the owner and is a more likely scenario as to the Employer's hiring plans. Even assuming that the Employer's projected hiring in this second plan is not too speculative to serve as the standard against which to measure the present complement of employees, applying the formula that the Board uses for expanding units, the Employer has failed to demonstrate that its current workforce is not substantial and representative of the anticipated unit. *Yellowstone International Mailing*, above; *Gerlach Meat Company*, (substantial and representative complement found where the workforce constituted 35 percent of the

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<sup>8</sup> This number does not include the four “value added” employees discussed above.

complement working in 50 percent of the classifications projected for the next nine months). The Employer's current complement of 11 employees would constitute 37 percent of the ultimate projected workforce of approximately 33 employees at the new facility in 100 percent of the classifications. See *Jersey Shore Nursing and Rehabilitation Center*, above. *Shares, Inc.*, above; *Yellowstone International Mailing*, above; *General Cable Corp.*, 173 NLRB 251 (1968). Cf. *Some Industries, Incorporated*, 204 NLRB 1142 (1973) (only about 17 percent of the projected number of employees in less than 50 percent of the projected job classifications at time of hearing); *K-P Hydraulics Company*, 219 NLRB 138 (1975) (only 26 percent of its total projected work force in less than half of the projected number of classifications). Under these circumstances, I find that the Employer currently employs a substantial and representative complement of employees in the petitioned-for unit, notwithstanding the Employer's anticipated future hiring.

Therefore, for the above reasons, the Employer's current employees should not be deprived of a representation election based on the Employer's expansion plans.

#### **IV. CONCLUSIONS AND FINDINGS**

Based upon the entire record in this matter and for the reasons set forth above, I conclude and find as follows:

1. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.
3. Petitioner is a labor organization that claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

Prior to the hearing, the Employer asked for a postponement of the hearing to Monday October 12, 2015 in order to have Gary Stern, the owner, appear and testify at the hearing. I denied the request for a postponement to that date and set the hearing for Friday October 9, 2015. I hereby affirm my decision to deny the postponement request to October 12, 2015 and conclude that the business plan presented by the Employer and the additional testimony by witnesses on behalf of the Employer and Petitioner provided facts sufficient to make a decision in this case.

Therefore, consistent with Section 102.64 of the Board's Rules and Regulations, I shall direct an election in this matter

5. In view of the foregoing and the record as a whole, consistent with Section 102.66(d) of the Board's Rules and Regulations, I find that the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time warehouse laborers and drivers employed by the Employer at its 2751 Spring Garden Drive, Middletown, Pennsylvania, facility. Excluded, all other employees, confidential employees, professional employees, managerial employees, guards and supervisors, as defined in the Act.

## **V. DIRECTION OF ELECTION**

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. Employees will vote whether or not they wish to be represented for purposes of collective bargaining by Teamsters Local 776.

### **A. Election Details**

The election will be held on **October 28, 2015 from 6:45 a.m. to 7:15 a.m., in the old break room at the Employer's facility located at 2751 Spring Garden Drive, Middletown, Pennsylvania.**<sup>9</sup>

### **B. Voting Eligibility**

Eligible to vote are those in the unit who were employed during the payroll period ending **October 11, 2015**, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls. Also eligible to vote using the Board's challenged ballot procedure are those individuals employed in the classifications whose eligibility remains unresolved as specified above and in the Notice of Election. Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

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<sup>9</sup> The Petitioner sought an election on October 19, 2015, which has passed. The Employer did not purpose a date certain but suggested that the election be held in November 2015 or later. The Union waived time requirements to receive the voter list. Thus, I have chosen October 28, 2015 as the date for the election.

### C. Voter List

As required by Section 102.67(l) of the Board's Rules and Regulations, the Employer must provide the Regional Director and parties named in this decision a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cell telephone numbers) of all eligible voters. The Employer must also include in a separate section of that list the same information for those individuals who, according to this direction of election, will be permitted to vote subject to challenge.

To be timely filed and served, the list must be *received* by the Regional Director and the parties by **October 26, 2015**. The list must be accompanied by a certificate of service showing service on all parties. **The Region will no longer serve the voter list.**

Unless the Employer certifies that it does not possess the capacity to produce the list in the required form, the list must be provided in a table in a Microsoft Word file (.doc or docx) or a file that is compatible with Microsoft Word (.doc or docx). The first column of the list must begin with each employee's last name and the list must be alphabetized (overall or by department) by last name. Because the list will be used during the election, the font size of the list must be the equivalent of Times New Roman 10 or larger.

That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at [www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015](http://www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015).

When feasible, the list shall be filed electronically with the Region and served electronically on the other parties named in this decision. The list may be electronically filed with the Region by using the E-filing system on the Agency's website at [www.nlr.gov](http://www.nlr.gov). Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions.

Failure to comply with the above requirements will be grounds for setting aside the election whenever proper and timely objections are filed. However, the Employer may not object to the failure to file or serve the list within the specified time or in the proper format if it is responsible for the failure.

No party shall use the voter list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

### D. Posting of Notices of Election

Pursuant to Section 102.67(k) of the Board's Rules, the Employer must post copies of the Notice of Election accompanying this Decision in conspicuous places, including all places where notices to employees in the unit found appropriate are customarily posted. The Notice must be posted so all pages of the Notice are simultaneously visible. In addition, if the Employer customarily communicates electronically with some or all of the employees in the unit found appropriate, the Employer must also distribute the Notice of Election electronically to those



employees. The Employer must post copies of the Notice at least 3 full working days prior to 12:01 a.m. of the day of the election and copies must remain posted until the end of the election. For purposes of posting, working day means an entire 24-hour period excluding Saturdays, Sundays, and holidays. However, a party shall be estopped from objecting to the nonposting of notices if it is responsible for the nonposting, and likewise shall be estopped from objecting to the nondistribution of notices if it is responsible for the nondistribution.

Failure to follow the posting requirements set forth above will be grounds for setting aside the election if proper and timely objections are filed.

### **RIGHT TO REQUEST REVIEW**

Pursuant to Section 102.67 of the Board's Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Decision until 14 days after a final disposition of the proceeding by the Regional Director. Accordingly, a party is not precluded from filing a request for review of this decision after the election on the grounds that it did not file a request for review of this Decision prior to the election. The request for review must conform to the requirements of Section 102.67 of the Board's Rules and Regulations.

A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to [www.nlr.gov](http://www.nlr.gov), select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, DC 20570-0001. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Neither the filing of a request for review nor the Board's granting a request for review will stay the election in this matter unless specifically ordered by the Board.

**DATED:** October 22, 2015

/s/ Dennis P. Walsh

**DENNIS P. WALSH**

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